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Attorney for Plaintiff Alla Petrovna Fedenko.
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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO OR OAKLAND DIVISION**

11 **ALLA PETROVNA FEDENKO,**

Case No.

12 Plaintiff,

13 v.

COMPLAINT

14 **ROBIN BARRETT, Field Office Director,**
15 **San Francisco Field Office, United States**
16 **Citizenship and Immigration Services;**
17 **ROSEMARY L. MELVILLE, District**
18 **Director, San Francisco District Office,**
19 **United States Citizenship and Immigration**
20 **Services; ROBERT S. MUELLER, III,**
21 **Director, Federal Bureau of Investigation;**
22 **UNITED STATES OF AMERICA;**

(Immigration Case)

23 Defendants.
24 _____/

1 Plaintiff Alla Petrovna Fedenko, by and through her undersigned attorney, hereby
2 brings this action and states as follows:

3 **JURISDICTION**

4 1. The Court has subject matter jurisdiction over this civil action under 28 U.S.C. §
5 1331 because it presents a question under the laws of the United States. The Court also has
6 jurisdiction over the subject matter of this action pursuant to Section 1447(b) of Title 8 of the
7 United States Code, which specifically gives the Court jurisdiction to decide a naturalization
8 application not decided within 120 days of examination.

9 **VENUE**

10 2. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(e) because all of
11 the defendants are officers or employees of the United States sued in their official capacity.
12 Plaintiff Alla Petrovna Fedenko resides in this judicial district.

13 **INTRADISTRICT ASSIGNMENT**

14 3. Assignment to either the San Francisco or Oakland Division is appropriate under
15 Civil Local Rule 3-2(d) because the action arises in the County of San Francisco.

16 **PARTIES**

17 4. Plaintiff Alla Petrovna Fedenko is a native and citizen of Russia. She has been a
18 lawful permanent resident of the United States since July 9, 1999. The Immigration and
19 Naturalization Service, as predecessor to United States Citizenship and Immigration Services
20 (“USCIS”), issued Ms. Fedenko the alien registration number of A47-194-698. Attachment A
21 is a true and correct copy of Ms. Fedenko’s permanent resident card. Ms. Fedenko resides in
22 Windsor, Sonoma County, California.

23 5. Defendant Robin Barrett is an officer or employee of the United States as the
24 Field Office Director for the USCIS San Francisco Field Office.

6. Defendant Rosemary L. Melville is an officer or employee of the United States as District Director for the USCIS San Francisco District Office, which encompasses the USCIS San Francisco Field Office.

7. Defendant Robert S. Mueller, III, is an officer or employee of the United States as Director of the Federal Bureau of Investigation.

STATEMENT OF THE CLAIM

8. This claim arises from Plaintiff Alla Petrovna Fedenko's application for naturalization to United States citizenship, which USCIS received on October 28, 2005. The receipt number assigned to the application is WSC*001403416. Attachment B is a true and correct copy of the Fingerprint Notification that USCIS issued in response to the application.

9. Officer Marlene Amador of USCIS interviewed Ms. Fedenko on her application for naturalization on April 5, 2006, at the USCIS San Francisco Field Office. Ms. Fedenko passed the required tests of English and U.S. history and government for naturalization. She was informed, however, that a decision could not be made yet on her naturalization application for the following reason: "FBI PENDING." The officer gave no other reason for the delay in adjudicating the application. Attachment C is a true and correct copy of the N-652, Naturalization Interview Results, that Ms. Fedenko received at the conclusion of her interview.

10. To this date, more than two years after the interview, USCIS has not yet decided Ms. Fedenko's application for naturalization.

11. Ms. Fedenko has inquired on the status of her naturalization application on August 31, 2006, May 3, 2007, and October 23, 2007. In response to each of these inquiries, USCIS informed her that it has not decided her naturalization application because the required investigation into her background was not complete. Attachment D consists of true and

1 correct copies of the USCIS notices dated August 31, 2006, May 10, 2007, September 18,
2 2007, and October 31, 2007, in response to Ms. Fedenko's inquiries.

3 12. The Federal Bureau of Investigation is responsible, in part, for conducting the
4 background investigation of naturalization applicants.

5 13. Ms. Fedenko previously underwent a background investigation prior to her
6 immigration to the United States in 1999.

7 14. The more than two years that have passed so far for the current background
8 investigation is unreasonable.

9 15. USCIS's failure to decide Ms. Fedenko's application for naturalization has
10 harmed Ms. Fedenko by denying her the rights and privileges of United States citizenship,
11 including the ability to vote, to travel abroad on a United States passport, and to file
12 immigration petitions for relatives as a United States citizen.

13 **COUNT I**

14 16. Plaintiff re-alleges and incorporates by reference as if set forth fully herein the
15 statements in paragraphs 1 through 15 above.

16 17. This is an action for the Court to hear and decide Plaintiff's application for
17 naturalization pursuant to Section 1447(b) of Title 8 of the United States Code.

18 18. The Court may decide the naturalization application or remand it to USCIS with
19 instructions to decide it immediately because Defendants have not decided the application
20 within 120 days after examination.

21 19. Ms. Fedenko is eligible to naturalize to United States citizenship.

22 WHEREFORE, Plaintiff requests that judgment be entered in favor of Plaintiff and
23 against Defendants, and that the Court naturalize Alla Petrovna Fedenko to United States
24 citizenship.

COUNT II

20. Plaintiff re-alleges and incorporates by reference as if set forth fully herein the statements in paragraphs 1 through 19 above.

21. This is an action for attorneys' fees and costs pursuant to the Equal Access to Justice Act ("EAJA"), Section 2412 of Title 28 of the United States Code.

22. If Plaintiff prevails in this action, she will be eligible to receive an award of attorney fees in addition to costs under EAJA because the position of the United States was not substantially justified, under Section 2412(d)(1)(A) of Title 28 of the United States Code.

WHEREFORE, Plaintiff requests that judgment be entered in favor of Plaintiff and against Defendants, and that the Court enter a judgment awarding Plaintiff reasonable attorney fees and costs pursuant to the EAJA, and that the Court award all other such relief to Plaintiff as this Court deems just, proper and equitable.

Dated: April 14, 2008.

Respectfully submitted,

Scott A. Mossman
Attorney for Plaintiff Alla Petrovna Fedenko.

1 Scott A. Mossman, State Bar No. 227178
1611 Telegraph Ave, Suite 1100
2 Oakland CA 94612
Tel. (510) 835-1115
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Attorney for Plaintiff Alla Petrovna Fedenko.
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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO OR OAKLAND DIVISION**

11 **ALLA PETROVNA FEDENKO,**

Case No.

12 Plaintiff,

13 v.

**CERTIFICATION RE INTERESTED
ENTITIES OR PERSONS**

14 **ROBIN BARRETT, Field Office Director,**
15 **San Francisco Field Office, United States**
16 **Citizenship and Immigration Services;**
17 **ROSEMARY L. MELVILLE, District**
18 **Director, San Francisco District Office,**
19 **United States Citizenship and Immigration**
20 **Services; ROBERT S. MUELLER, III,**
21 **Director, Federal Bureau of Investigation;**
22 **UNITED STATES OF AMERICA;**

(Immigration Case)

23 Defendants.
24 _____/

1 Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the
2 named parties, there is no such interest to report.

3 Dated: April 14, 2008.

4 Respectfully submitted,

5 _____
6 Scott A. Mossman
7 Attorney for Plaintiff Alla Petrovna Fedenko.
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UNITED STATES OF AMERICA

Fingerprint Notification

CASE TYPE

N409 Application For Naturalization

APPLICATION NUMBER

WSC*001403416

RECEIVED DATE

October 28, 2005

PRIORITY DATE

October 28, 2005

NOTICE DATE

January 09, 2006

INS AN

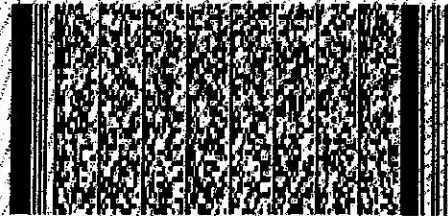
A 047 194 698

PAGE

1 of 1

APPLICANT NAME AND MAILING ADDRESS

ALLA PETROVNA FEDENKO
1297 EAGLE DR
WINDSOR CA 95492



|||||

To process your application, INS must take your fingerprints and have them cleared by the FBI. PLEASE APPEAR AT THE BELOW APPLICATION SUPPORT CENTER AT THE DATE AND TIME SPECIFIED. If you are unable to do so, complete the bottom of this notice and return the entire original notice to the address below. RESCHEDULING YOUR APPOINTMENT WILL DELAY YOUR APPLICATION. IF YOU FAIL TO APPEAR AS SCHEDULED BELOW OR FAIL TO REQUEST RESCHEDULING, YOUR APPLICATION WILL BE CONSIDERED ABANDONED.

APPLICATION SUPPORT CENTER

INS SANTA ROSA
1401 GUERNEVILLE RD
SUITE 100
SANTA ROSA CA 95403

DATE AND TIME OF APPOINTMENT

01/31/2006
10:00 AM

WHEN YOU GO TO THE APPLICATION SUPPORT CENTER TO HAVE YOUR FINGERPRINTS TAKEN, YOU MUST BRING:

1. THIS APPOINTMENT NOTICE and
2. PHOTO IDENTIFICATION. Naturalization applicants must bring their Alien Registration Card. All other applicants must bring a passport, driver's license, national ID, military ID, or State-issued photo ID. If you appear without proper identification, you will not be fingerprinted.

PLEASE DISREGARD THIS NOTICE IF YOUR APPLICATION HAS ALREADY BEEN GRANTED.

REQUEST FOR RESCHEDULING

Please reschedule my appointment for the next available: ☒ Wednesday afternoon ☐ Saturday afternoon

INS cannot guarantee the day preferred, but will do so to the extent possible.

Upon receipt of your request, you will be provided a new appointment notice. Please mail your request to:

INS SANTA ROSA
1401 GUERNEVILLE RD
SUITE 100
SANTA ROSA CA 95403

BIOMETRICS PROCESSING STAMP
ASC SITE CODE
BIOMETRICS QA REVIEW BY

ON
TENPRINTS QA REVIEW BY:

823406 ON 1/31/06

If you have any questions regarding this notice, please call 1-800-375-5283.

APPLICANT COPY

APPLICATION NUMBER

WSC*001403416



WARNING!

Due to limited seating availability in our lobby areas, only persons who are necessary to assist with transportation or completing the fingerprint worksheet should accompany you.

Department of Homeland Security
U.S. Citizenship and Immigration Services

N-652, Naturalization Interview Results

Fedenko

A#:

47194698

On APR 05 2006

, you were interviewed by USCIS officer

Marlene Amador

- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the tests of U.S. history and government and the English language requirement was waived.
- ☐ USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to _____ speak/ _____ read/ _____ write _____ English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☐ Please follow the instructions on Form N-14.
- ☐ USCIS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your _____ English ability/ _____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this Form N-400. USCIS will send you a written decision about your application.

A) _____ Congratulations! Your application has been recommended for approval. At this time it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) ☒ A decision cannot yet be made about your application. FBI PENDING

It is very important that you:

- ☒ Notify USCIS if you change your address.
- ☒ Come to any scheduled interview.
- ☒ Submit all requested documents.
- ☒ Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.
- ☒ Go to any Oath Ceremony that you are scheduled to attend.
- ☒ Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

NOTE: Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied, or before the U.S. district court if USCIS had not made a determination on your application within 120 days of the date of your examination.

U.S. Department of Homeland Security
USCIS
630 Sansome Street
San Francisco, CA 94111



**U.S. Citizenship
and Immigration
Services**

Thursday, August 31, 2006

ALLA FEDENKO
1297 EAGLE DR
WINDSOR AL 95492

Dear alla fedenko:

On 08/31/2006 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

Person who contacted us:	BELLU, INNA
Caller indicated they are:	A translator
Attorney Name:	Information not available
Case type:	N400
Filing date:	10/28/2005
Receipt #:	
Beneficiary (if you filed for someone else):	fedenko, alla
Your USCIS Account Number (A-number):	A047194698
Type of service requested:	Case Status - Outside Processing Time

The status of this service request is:

The processing of your case has been delayed. A check of our records establishes that your case is not yet ready for decision, as the required investigation into your background remains open.

Until the background investigation is completed, we cannot move forward on your case. These background checks are required to be completed on all applicants who apply for the immigration benefit you are seeking. We will make every effort to make a decision on this case as soon as the background checks are complete. If you do not receive a decision or other notice of action from us within 6 months of this letter, please contact us by calling our customer service number provided below.

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Citizenship and Immigration Services

U.S. Department of Homeland Security
USCIS
630 Sansome Street
San Francisco, CA 94111



**U.S. Citizenship
and Immigration
Services**

Thursday, May 10, 2007

ALLA P FEDENKO
1297 EAGLE DRIVE
WINDSOR CA 95492

Dear ALLA P FEDENKO:

On 05/03/2007 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

Person who contacted us:	BELLU, INNA
Caller indicated they are:	A translator
Attorney Name:	Information not available
Case type:	N400
Filing date:	Information not available
Receipt #:	WSC*001403416
Beneficiary (if you filed for someone else):	FEDENKO, ALLA, P
Your USCIS Account Number (A-number):	Information not available
Type of service requested:	Case Status - Outside Processing Time

The status of this service request is:

The processing of your case has been delayed. A check of our records establishes that your case is not yet ready for decision, as the required investigation into your background remains open.

Until the background investigation is completed, we cannot move forward on your case. These background checks are required to be completed on all applicants who apply for the immigration benefit you are seeking. We will make every effort to make a decision on this case as soon as the background checks are complete. If you do not receive a decision or other notice of action from us within 6 months of this letter, please contact us by calling our customer service number provided below.

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Citizenship and Immigration Services



**U.S. Citizenship
and Immigration
Services**

ALLAN PETROVNA FEDENKO
1297 EAGLE DRIVE
WINDSOR, CA 95492

A047194698
Date: 9/18/2007
Officer: MW

Re: Pending N-400 for Background Check

This is in response to your recent inquiry. A review of your application shows that your Form N-400, Application for Naturalization, is still pending for the completion of all necessary background checks. Unfortunately a decision on your application cannot be made until all required security checks have been completed. All cases pending for security checks are regularly reviewed for any new cases that have cleared.

We apologize for the delay and request your cooperation and patience in waiting for these important checks to be completed.

Any future inquiries for cases pending outside normal processing times should be directed to the National Customer Service Center at 1-800-375-5283.

Thank you.

U.S. Citizenship and Immigration Services
630 Sansome Street
San Francisco CA 94111

U.S. Department of Homeland Security
USCIS
630 Sansome Street
San Francisco, CA 94111



**U.S. Citizenship
and Immigration
Services**

Wednesday, October 31, 2007

ALLA P FEDENKO
1297 EAGLE DRIVE
WINDSOR CA 95492

Dear ALLA P FEDENKO:

On 10/23/2007 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

Person who contacted us:	BELLU, INNA
Caller indicated they are:	Translator for Applicant or Petitioner
Attorney Name:	Information not available
Case type:	N400
Filing date:	10/28/2005
Receipt #:	WSC*001403416
Beneficiary (if you filed for someone else):	FEDENKO, ALLA
Your USCIS Account Number (A-number):	Information not available
Type of service requested:	Outside Normal Processing Times

The status of this service request is:

Based on your request we researched the status of this case. We are actively processing this case. However, we have to perform additional review on this case and this has caused a longer processing time. If you do not receive a decision or other notice of action from us within 6 months of this letter, please call customer service at the number provided below.

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Citizenship and Immigration Services